

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of KAMILLA ANGELIEKE
TRUJILLO, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

WILLIAM KING,

Respondent-Appellant,

and

JENNIFER MELISSA TRUJILLO,

Respondent.

UNPUBLISHED

April 22, 2010

No. 294125

Montcalm Circuit Court

Family Division

LC No. 2008-000358-NA

Before: SERVITTO, P.J., and FITZGERALD and BECKERING, JJ.

PER CURIAM.

Respondent father, William King, appeals by right from the trial court order terminating his parental rights under MCL 712A.19b(3)(c)(i) and (g)¹. We affirm.

Respondent father first appears to argue that the proceedings were void because the trial court lacked jurisdiction over the minor child. This Court reviews the trial court's decision to exercise jurisdiction for clear error in light of the court's findings of fact. *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004).

At the pretrial conference, respondent parents admitted to the amended allegations set forth in the petition, and there were no terms of any agreement placed on the record. Respondent father does not argue that the trial court clearly erred in holding that his admissions established a factual basis for finding jurisdiction. He argues instead that he did not understand the

¹ The parental rights of respondent mother were not terminated.

proceedings and did not have a real opportunity to regain custody of his daughter. However, there is no indication on the record that respondent father did not understand the proceedings. He was 18 years old when the proceedings were initiated, counsel represented him, and he appeared to understand the legal effect of his admissions. Respondent father does not argue with any specificity any misunderstanding. Therefore, we find that the trial court did not clearly err in finding jurisdiction over the minor child.

Next, respondent father argues that the trial court clearly erred in finding that petitioner established the statutory grounds for termination and in its best interests determination. This Court reviews decisions terminating parental rights for clear error. MCR 3.977(J). Clear error has been defined as a decision that strikes this Court as more than just maybe or probably wrong. *In re Trejo*, 462 Mich 341, 357; 612 NW2d 407 (2000).

The trial court found that petitioner established MCL 712A.19b(3)(c)(i) and (g). MCL 712A.19b(3)(c)(i) provides for termination where, “[t]he conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.” MCL 712A.19b(3)(g) allows for termination when:

The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

There is no question that the conditions of adjudication continued to exist at the time of the termination hearing and that respondent father could not provide proper care and custody for the minor child. The conditions leading to adjudication were domestic violence between respondent parents, respondent parents’ failure to use age appropriate feeding techniques or to take the minor child for medical checkups, and that respondent parents were behind on their rent. At the time of the termination hearing, respondent father had not completed domestic violence classes, individual counseling, or any other relevant part of his service agreement, and he did not have stable housing. There was also evidence at the termination hearing that respondent father used marijuana and alcohol and had, in fact, tested positive for both during the course of the proceedings. Respondent father also engaged in criminal conduct.

Moreover, it was not clear error for the trial court to find that respondent father would not be able to rectify these conditions within a reasonable time considering the minor child’s age. Respondent father was in and out of jail throughout these proceedings, and indicated he was to be released from jail in October. While his incarcerations may have had some impact on his ability to comply with his case service plan, the two-year-old minor child understandably needed permanence. Respondent father was extremely optimistic when he testified he expected to find employment and to have suitable housing within a few months following his release from jail. Respondent father had no family support. He testified he started drinking alcohol at age six and smoking marijuana at age seven. Despite this lengthy substance abuse history, respondent father was confident that he would remain substance free following his release from jail. Respondent father also testified he had incurred five criminal convictions since the start of the protective proceedings. The convictions were in addition to the criminal history that he acquired prior to the proceedings, which included a CSC conviction. The time it would have taken respondent to

get on his feet and to prove his ability to remain crime and substance free most likely would not have been a reasonable time considering the minor child's young age. Therefore, the trial court did not clearly err in finding that sections (c)(i) and (g) were established by clear and convincing evidence.

The trial court also did not clearly err in its best interests determination. MCL 712A.19b(5) provides, "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." The plan for the minor child when the court first exercised its jurisdiction was reunification with both parents. Although respondent father had a strong bond with the child before she was removed, and his psychological evaluation was favorable toward parenting and his relationship with her, respondent father made very little effort toward his case service plan and had not seen his daughter in months². Considering that respondent father had a great deal of supervision by DHS and his criminal probation officers during the proceedings, yet continued his criminal behavior, lacked participation in available services, had no housing or employment, remained in jail at the time of termination, and continued the use of drugs and alcohol throughout the proceedings, we find that the trial court did not clearly err in its best interests determination.³

Respondent father also argues that his procedural due process rights were violated by a substitution of trial counsel 33 days before the termination hearing. "[T]he principles of effective assistance of counsel developed in the context of criminal law apply by analogy in child protective proceedings." *In re CR*, 250 Mich App 185, 197-198; 646 NW2d 506 (2002). This Court reviews a trial court's decision regarding substitution of counsel for an abuse of discretion. *People v Traylor*, 245 Mich App 460, 462; 628 NW2d 120 (2001). "Appointment of a substitute counsel is warranted only upon a showing of a good cause and where substitution will not unreasonably disrupt the judicial process." *People v Mack*, 190 Mich App 7, 14; 475 NW2d 830 (1991).

Here, MRPC 1.10 prohibited respondent father's original counsel from continuing in that representation because of a conflict of interest. Good cause was thus shown for substitution of counsel. Further, there was no interruption in the judicial process. Respondent father's new attorney was given ample time to prepare for the termination hearing. Respondent father has not

² Parenting time was suspended at one point during the proceedings due to respondent father's conduct in the presence of the minor child. Apparently, respondent father was angry at a caseworker during one of his supervised visits and lashed out in front of his daughter. The minor child was visibly upset and was returned to the foster family in tears. Although the next month visits were reinstated, respondent father did not attend.

³ Respondent father abandoned his argument that petitioner did not give any real consideration to returning the minor child to him. Respondent father's three-sentence appellate argument does not cite authority and does not specify any facts in support of the argument. An appellant may not give issues cursory treatment with little or no citation of supporting authority. *Goolsby v Detroit*, 419 Mich 651, 655 n 1; 358 NW2d 856 (1984).

shown any deprivation of procedural due process rights, and the trial court did not abuse its discretion by granting a substitution of counsel.

Affirmed.

/s/ Deborah A. Servitto
/s/ E. Thomas Fitzgerald
/s/ Jane M. Beckering